

Amendments to the Drawings:

The attached two (2) sheets include revisions to Figs. 5, 7 and 8. These sheets replace the original sheets including Figs. 5-8.

REMARKS

At issuance of the Office Action, Claims 1-23 were pending. As a result of the above amendments, Claims 1, 3, 5, 7, 12, 14, 15, 17-19 and 21-23 have been amended, and Claims 24 and 25 have been added. Therefore, Claims 1-25 are at issue in this Application.

Drawing and Specification Objections

The drawings, including Figs. 5-8, and the specification have been revised to resolve the objections in paragraph 2 of the Office Action. The amendments to the specification do not introduce any new matter.

Applicants have also amended the section of the Specification concerning related applications, as requested in paragraph 3 of the Office Action.

Regarding the drawing objection in paragraph 5 of the Office Action, Applicants note that paragraph [0084] includes written disclosure of the "...two separate apertures 276a, 276b." Thus, Figs. 1-8 comply with 37 CFR 1.84.

Section 112 Rejections

Claims 7, 8, 14, 15 and 19-23 have been amended to comply with the written description requirement. Also, Claims 1-16 and 18-20 have been amended to resolve the alleged indefiniteness.

Double Patenting Rejection

Claims 12, 17 and 21 were provisionally rejected on the grounds of non-statutory obviousness type double patenting over Claim 24 of co-pending Application No. 10/954,827. Applicants traverse this rejection for the following reasons.

A non-statutory obviousness type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim because the examined claim is either anticipated by, or rendered obvious over, the reference claim. *In re Berg*, 140 F.3d 1428, 46 USPQ.2d 1226 (Fed. Cir.

1998). Here, none of Claims 12, 17 or 21 are anticipated by or rendered obvious by Claim 24 of the '827 Application.

Claim 24 of the '827 Application is directed to a container lid, and requires: (i) a cover adapted to be attached to the container, the cover having a top wall, a side wall depending from the top wall, an opening, and a *track*, the side wall having a mounting portion for connecting the lid to the container; and, (ii) an overlay rotatably ***mounted on the track***, (iii) wherein the overlay is moveable by rotation between a first position wherein the overlay obstructs the opening, and a second position wherein the overlay does not obstruct the opening.

Regarding independent Claim 12, Claim 24 does not disclose or suggest: (i) a cover having a recessed central portion extending downward from an inner periphery of the top wall; (ii) an overlay having a top wall with both a recessed portion and a projection; and, (iii) mounting portions of both the cover and the overlay for rotatable connection of the overlay to the cover. Regarding the last point, Claim 24's structure is completely different since the overlay is mounted to a track of the cover that is distinct from the cover's mounting portion.

Regarding independent Claim 17, Claim 24 does not disclose or suggest: (i) an overlay having a band extending between opposed segments of the mounting portion; (ii) the overlay having distinct first and second apertures; and, (iii) mounting portions of both the cover and the overlay for rotatable connection of the overlay to the cover.

Regarding independent Claim 21, Claim 24 does not disclose or suggest mounting portions of both the cover and the overlay for rotatable connection of the overlay to the cover.

Because Claim 24 of the '827 Application does not disclose or suggest all limitations of Claims 12, 17 and 21, each of these Claims are patentably distinct. Consequently, the non-statutory obviousness type double patenting rejection is inappropriate. Furthermore, the present Application and the '827 Application claim priority to the same application, Serial No. 09/923,763 (filed Aug. 6, 2001). Since the term of a patent issuing from each of the present Application and the '827 Application is the same, there can be no extension of the "right to exclude." Thus, there are no public policy concerns and the double patenting rejection is inappropriate. In the event the Examiner maintains the double patenting rejection, Applicants request the Examiner to call the undersigned attorney to discuss the filing of a terminal disclaimer.

Allowable Subject Matter

As provided in paragraph 10 of the Office Action, Claims 1-23 are allowable if amended to overcome the Section 112 rejections. Applicants have done such and submit that Claims 1-23 are in condition for allowance.

Added Claims

Added dependent Claims 24 and 25 are supported by the Specification, do not introduce new matter, and are allowable over the art of record.


CONCLUSION

In view of the foregoing, Applicants believe that Claims 1-25 are in condition for allowance, and respectfully request early notice of the same. Applicants request that the Examiner call the undersigned attorney with any questions concerning this Reply, or if it will expedite the progress of this Application.

Respectfully submitted,

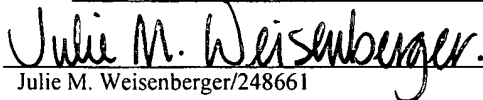
Dated: August 4, 2006

By: _____


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CERTIFICATE OF MAILING (37 C.F.R. § 1.8a)

I hereby certify that this correspondence is, on the date shown below, being deposited with the United States Postal Service, with first class postage prepaid, in an envelope addressed to: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on August 4, 2006


Julie M. Weisenberger/248661